

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KATHLEEN M. BOTKIN**  
Claimant

VS.

**IBP, INC.**

Respondent  
Self-Insured

AND

**WORKERS COMPENSATION FUND**

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)  
) Docket Nos. 140,006; 148,442;  
) 181,176; 181,177;  
) 181,178  
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**ORDER**

The claimant appealed from the Order entered by Administrative Law Judge Floyd V. Palmer on April 16, 1998. Stacy Parkinson has been appointed Member Pro Tem for this case to serve in place of Board Member Gary Korte who has recused himself from this proceeding.

**APPEARANCES**

Claimant appeared by her attorney, John J. Bryan of Topeka, Kansas. The respondent appeared by its attorney, Tina M. Sabag of Dakota City, Nebraska. The Workers Compensation Fund did not participate.

**RECORD AND STIPULATIONS**

There is no record of the proceedings held before the Administrative Law Judge on April 15, 1998. The record for this review consists of the letters, pleadings, and other documents contained in the Division of Workers Compensation's administrative file.

**ISSUES**

Respondent requested that claimant submit to a "Work Disability Evaluation" with respondent's vocational expert. Claimant refused. The Administrative Law Judge ordered that claimant attend and be interviewed. Claimant appeals that order. Counsel for claimant was granted permission to attend the interview and, if desired, record it by videotape or court reporter. Respondent objects to that portion of the Order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

The Appeals Board must first determine whether it has jurisdiction to consider this appeal from the Administrative Law Judge's April 16, 1998, Order.

This is not an appeal from an order entered pursuant to the preliminary hearing statute. This appeal is a result of a hearing held, prior to the final award, on the claimant's refusal to be interviewed by respondent's vocational expert on the question of work disability. It is noted that claimant did agree to be and was interviewed by her own vocational expert. Compensability of the claim is not an issue on appeal.

For the Appeals Board to have jurisdiction to review this order, at this juncture of the proceeding, the appeal would have to be brought pursuant to K.S.A. 1997 Supp. 44-551(b)(1). The amendments to K.S.A. 44-551(b)(1), effective July 1, 1997, changed the jurisdiction of the Appeals Board from reviewing "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge" to review of "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge."

The Appeals Board finds the Administrative Law Judge's Order is not a final order, award, modification of an award, or a preliminary hearing award as contemplated by K.S.A. 1997 Supp. 44-551(b)(1). The Appeals Board concludes the Order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. Therefore, the Appeals Board lacks jurisdiction to review the order until it is contained in a final order or award.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the claimant's appeal from the Order entered by Administrative Law Judge Floyd V. Palmer dated April 16, 1998, should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Tina M. Sabag, Dakota City, NE  
Derek R. Chappell, Ottawa, KS  
Office of the Administrative Law Judge, Topeka, KS  
Philip S. Harness, Director